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# Murder Of A Peace Officer. Criminal Penalties. Special Circumstance. Peace Officer Definition.

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## Murder of a Peace Officer. Criminal Penalties. Special Circumstance. Peace Officer Definition. Legislative Initiative Amendment

### Official Title and Summary

MURDER OF A PEACE OFFICER. CRIMINAL PENALTIES. SPECIAL CIRCUMSTANCE. PEACE OFFICER DEFINITION. LEGISLATIVE INITIATIVE AMENDMENT. The Briggs Death Penalty Initiative Act defined "peace officer" for cases where a defendant is found guilty of first degree murder and the victim was a peace officer. No changes have been made to this section since its enactment. The Legislature has reclassified peace officers by grouping them into different categories and has made other changes since 1979. This statute conforms the definition found in the Initiative Act to the new classifications, thereby increasing the numbers and types of peace officers covered by the act. Summary of Legislative Analyst's estimate of net state and local government fiscal impact: Increases the number of peace officers for which the special circumstance for first degree murder applies. To the extent longer prison terms result, there will be unknown increases in state costs.

### Final Vote Cast by the Legislature on SB 353 (Proposition 114)

Assembly: Ayes 78	Senate: Ayes 37
Noes 0	Noes 0

### Analysis by the Legislative Analyst

#### Background

In 1978, the voters adopted an initiative pertaining to the penalties for first-degree and second-degree murder. With regard to the punishment for first-degree murder, the Death Penalty Initiative expanded the special circumstances under which the death penalty, or a life sentence without the possibility of parole, would be imposed. These special circumstances include the murder of certain peace officers, as defined in various sections of the Penal Code.

The California Constitution provides that the Legislature may amend an initiative by another statute, but the statute becomes effective only when approved by the voters.

Since 1978, there have been no changes to the Death Penalty Initiative. The Legislature, however, has amended the Penal Code. These amendments have

resulted in some persons being deleted from, and other persons being added to, the definition of a peace officer. These persons include various employees of the state and local governments.

#### Proposal

By reference, this measure would incorporate the legislative changes in the definition of a peace officer into the provisions of the 1978 Death Penalty Initiative. As a result, this measure expands the number and types of peace officers the murder of whom would be a special circumstance under the 1978 Death Penalty Initiative.

#### Fiscal Effect

This measure increases the number of crimes for which the special circumstances for first-degree murder may apply. To the extent these changes result in longer prison terms, there will be unknown increases in state costs.

## Text of Proposed Law

his law proposed by Senate Bill 353 (Statutes of 1989, Chapter 1165) is submitted to the people in accordance with the provisions of Article II, Section 10 of the Constitution.

This proposed law amends a section of the Penal Code; therefore, existing provisions proposed to be deleted are printed in ~~strikeout type~~ and new provisions proposed to be added are printed in *italic type* to indicate that they are new.

### PROPOSED LAW

SEC. 16. Section 190.2 of the Penal Code is amended to read:

190.2. (a) The penalty for a defendant found guilty of murder in the first degree shall be death or confinement in state prison for a term of life without the possibility of parole in any case in which one or more of the following special circumstances has been charged and specially found under Section 190.4, to be true:

(1) The murder was intentional and carried out for financial gain.

(2) The defendant was previously convicted of murder in the first degree or second degree. For the purpose of this paragraph an offense committed in another jurisdiction which if committed in California would be punishable as first or second degree murder shall be deemed murder in the first or second degree.

(3) The defendant has in this proceeding been convicted of more than one offense of murder in the first or second degree.

(4) The murder was committed by means of a destructive device, bomb, or explosive planted, hidden or concealed in any place, area, dwelling, building or structure, and the defendant knew or reasonably should have known that his *or her* act or acts would create a great risk of death to a human being or human beings.

(5) The murder was committed for the purpose of avoiding or evading a lawful arrest or to perfect, or attempt to perfect an escape from lawful custody.

(6) The murder was committed by means of a destructive device, bomb, or explosive that the defendant mailed or delivered, attempted to mail or deliver, or cause to be mailed or delivered and the defendant knew or reasonably should have known that his *or her* act or acts would create a great risk of death to a human being or human beings.

(7) The victim was a peace officer as defined in Section 830.1, 830.2, 830.3, 830.31, 830.32, 830.33, 830.34, 830.35, 830.36, 830.37, 830.4, 830.5, ~~830.5a~~, 830.6, 830.10, 830.11 or 830.12, who, while engaged in the course of the performance of his *or her* duties was intentionally killed, and ~~such the~~ defendant knew or reasonably should have known that ~~such the~~ victim was a peace officer engaged in the performance of his *or her* duties; or the victim was a peace officer as defined in the above enumerated sections of the Penal Code, or a former peace officer under any of such sections, and was intentionally killed in retaliation for the performance of his *or her* official duties.

(8) The victim was a federal law enforcement officer or agent, who, while engaged in the course of the performance of his *or her* duties was intentionally killed, and ~~such the~~ defendant knew or reasonably should have known that ~~such the~~ victim was a federal law enforcement officer or agent, engaged in the performance of his *or her* duties; or the victim was a federal law enforcement officer or agent, and was intentionally killed in retaliation for the performance of his *or her* official duties.

(9) The victim was a ~~fireman~~ *firefighter* as defined in Section 245.1, who while engaged in the course of the performance of his *or her* duties was intentionally killed, and ~~such the~~ defendant knew or reasonably should have known that ~~such the~~ victim was a ~~fireman~~ *firefighter* engaged in the performance of his *or her* duties.

(10) The victim was a witness to a crime who was intentionally

killed for the purpose of preventing his *or her* testimony in any criminal proceeding, and the killing was not committed during the commission, or attempted commission ~~or of~~ the crime to which he *or she* was a witness; or the victim was a witness to a crime and was intentionally killed in retaliation for his *or her* testimony in any criminal proceeding.

(11) The victim was a prosecutor or assistant prosecutor or a former prosecutor or assistant prosecutor of any local or state prosecutor's office in this state or any other state, or a federal prosecutor's office and the murder was carried out in retaliation for or to prevent the performance of the victim's official duties.

(12) The victim was a judge or former judge of any court of record in the local, state or federal system in the State of California or in any other state of the United States and the murder was carried out in retaliation for or to prevent the performance of the victim's official duties.

(13) The victim was an elected or appointed official or former official of the Federal Government, a local or State government of California, or of any local or state government of any other state in the United States and the killing was intentionally carried out in retaliation for or to prevent the performance of the victim's official duties.

(14) The murder was especially heinous, atrocious, or cruel, manifesting exceptional depravity; ~~as~~. As utilized in this section, the phrase especially heinous, atrocious or cruel manifesting exceptional depravity means a conscienceless, or pitiless crime which is unnecessarily torturous to the victim.

(15) The defendant intentionally killed the victim while lying in wait.

(16) The victim was intentionally killed because of his *or her* race, color, religion, nationality or country of origin.

(17) The murder was committed while the defendant was engaged in or was an accomplice in the commission of, attempted commission of, or the immediate flight after committing or attempting to commit the following felonies:

(i) Robbery in violation of Section 211.

(ii) Kidnapping in violation of Sections 207 and 209.

(iii) Rape in violation of Section 261.

(iv) Sodomy in violation of Section 286.

(v) The performance of a lewd or lascivious act upon person of a child under the age of 14 in violation of Section 288.

(vi) Oral copulation in violation of Section 288a.

(vii) Burglary in the first or second degree in violation of Section 460.

(viii) Arson in violation of Section 447.

(ix) Train wrecking in violation of Section 219.

(18) The murder was intentional and involved the infliction of torture. For the purpose of this section torture requires proof of the infliction of extreme physical pain no matter how long its duration.

(19) The defendant intentionally killed the victim by the administration of poison.

(b) Every person whether or not the actual killer found guilty of intentionally aiding, abetting, counseling, commanding, inducing, soliciting, requesting, or assisting any actor in the commission of murder in the first degree shall suffer death or confinement in state prison for a term of life without the possibility of parole, in any case in which one or more of the special circumstances enumerated in ~~paragraphs~~ *paragraph* (1), (3), (4), (5), (6), (7), (8), (9), (10), (11), (12), (13), (14), (15), (16), (17), (18), or (19) of subdivision (a) of this section has been charged and specially found under Section 190.4 to be true.

The penalty shall be determined as provided in Sections 190.1, 190.2, 190.3, 190.4, and 190.5.

## Murder of a Peace Officer. Criminal Penalties. Special Circumstance. Peace Officer Definition. Legislative Initiative Amendment

### Argument in Favor of Proposition 114

Proposition 114 will require your approval if the death penalty is to be imposed as the voters demanded back in 1978. It updates and clarifies provisions regarding the murder of our peace officers.

In 1978 the voters approved Proposition 7, the Death Penalty Initiative, which established the circumstances and conditions under which a murderer might be sentenced to death. One such circumstance is the murder of a peace officer engaged in his or her duties, when the defendant knew or reasonably should have known that the victim was in fact an officer. For purposes of imposing this sentence, the various classes of peace officers—police officers, sheriffs' deputies, investigators, and security officers—are listed in the law by reference to the statutes which establish their special authority. Only your vote can change that law.

In the years since the death penalty was enacted, new categories of peace officers have been created by the Legislature. Most of these are investigators whose pursuit of white collar criminals supplements the work of regular

police and sheriffs. Some provide public safety services on special public lands. All are sworn to your service, and willingly face danger and hardship in the interests of law and order.

Proposition 114 simply adds these new categories of peace officers to the list of those whose deaths can trigger a death penalty sentence for the perpetrator. The will of the people has been made clear: the murder of a peace officer should carry the ultimate sentence. Your "yes" vote will guarantee that no murderer of a peace officer will avoid the ultimate penalty solely because the law is technically not up to date.

Please vote "yes" on Proposition 114. Keep the message clear: the murder of *any* peace officer in the State will not be tolerated.

**ROBERT PRESLEY**

*State Senator, 36th District*

**WILLARD MURRAY**

*Member of the Assembly, 54th District*

### Rebuttal to Argument in Favor of Proposition 114

We object to so many bureaucrats being designated as "peace officers," thus having the power to carry weapons, visit and inspect the premises of any licensee affected by their agency, and to make arrests.

Some employees of the Department of Motor Vehicles, the Office of Statewide Health Planning and Development, and the Department of Housing and Community Development, to name a few, to have such vast powers.

We oppose the phenomenal growth of state government. The California budget has doubled since 1982, and there are more state employees on the payroll. The agencies listed in Proposition 114 often don't cost much in the budget, but the money they cost due to excessive regulation of businesses and jobs is hard to measure.

We are the Libertarian Party candidates for Attorney

General, Lt. Governor, and Insurance Commissioner. The appropriate bureaucrat violated our First Amendment rights by not allowing us to sign this rebuttal and the following argument as candidates.

Strike a blow for liberty. VOTE NO on Proposition 114.

**PAUL N. GAUTREAU**

*Attorney at Law*

*Member, State Central Committee,*

*Libertarian Party of California*

**ANTHONY G. BAJADA**

*Professor of Music, California State*

*University/Los Angeles*

*Member, State Central Committee,*

*Libertarian Party of California*

**TED BROWN**

*Member, State Executive Committee,*

*Libertarian Party of California*

# Murder of a Peace Officer. Criminal Penalties. Special Circumstance. Peace Officer Definition. Legislative Initiative Amendment

114

## Argument Against Proposition 114

Proposition 114 is part of legislation that defines which officials are "peace officers" and under what conditions they can exercise their law enforcement authority. It looks as if a large percentage of state employees meet these specifications.

Everyone considers a California Highway Patrol officer or a State Police officer to be a peace officer. The officers of such rinky-dink agencies as the Board of Dental Examiners, the California Horse Racing Board, the Division of Labor Standards Enforcement, and the Department of Corporations are defined as "peace officers" as well.

The authors of this proposal want even more state employees to be designated as "peace officers" so that they can expand the "special circumstances" under which a convicted murderer can be sentenced to death or life imprisonment without possibility of parole.

The "special circumstances" are extensive and mostly sound, such as when "the murder was especially heinous, atrocious, or cruel, manifesting exceptional depravity." However, many of the "circumstances" have to do with *who* is killed, not how the murder is committed. If the victim is an elected official, a judge, or a "peace officer," the killer has met the special circumstances and is treated accordingly.

While we certainly oppose killing any of these officials, we also oppose exalting their lives to more importance

than the lives of average citizens. Proposition 114 will add more of these "special people" to the list.

Murder is murder—when it's an intentional, premeditated act. We do not believe that the law should provide different penalties for killing one class of people. The murder of a police officer is tragic, but is that any more tragic than the murder of a store owner, a school teacher, or anyone else? In America, all persons are supposed to be equal before the law.

We urge you to vote NO on Proposition 114 for two reasons: (1) the death penalty or life in prison without parole should *not* depend on the victim's identity; and (2) more government bureaucrats should not be designated as "peace officers" capable of enforcing regulations that strangle the economy and violate individual rights.

PAUL N. GAUTREAU

*Attorney at Law*

*Member, State Central Committee,  
Libertarian Party of California*

ANTHONY G. BAJADA

*Professor of Music, California State University/  
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*Member, State Executive Committee,  
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## Rebuttal to Argument Against Proposition 114

Opponents argue against an existing law which the voters enacted over a decade ago—the Death Penalty for the killing of a peace officer. Their "two reasons to vote No" are no reasons at all.

They argue that the death penalty should not be imposed depending on the identity of the victim. There is merit to this notion. In fact, it is the general rule in our law. But you have chosen to create a separate rule, in this one instance, regarding the murder of a person *known* by the assailant to be a police officer because such a crime is more than an attack on a individual. It is an attack on order in our society, personified by our officers, which must be maintained if we are to have a civilized state.

But this issue, this "reason" to vote No, is simply not relevant. The special circumstance the opponents reject

is existing law and not a new proposal in this measure.

The "second reason" is based on a total misunderstanding of this proposition, and the legislation which generated it. This measure does *not* designate new classes of peace officers. The bill which caused this proposal to appear on the ballot did *not* designate new officers. All the individuals covered have been peace officers for some time. Proposition 114 only guarantees that criminals who commit the murder of *any* peace officer face the possibility of a death sentence.

Stand by *all* of California law enforcement. Vote *Yes* on 114.

ROBERT PRESLEY

*State Senator, 36th District*